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OFFICE OF PETITIONS

In re Patent No. 7,678,759	:	DECISION
SONTHEIMER et al.	:	DISMISSING REQUEST FOR
Issue Date: May 16, 2010	:	RECONSIDERATION OF PATENT
Application No. 10/686,782	:	TERM ADJUSTMENT
Filed: October 17, 2003	:	UNDER 37 CFR 1.705(d)
Attorney Docket No. 2006636-0064	:	

This is a decision on the petition filed on May 17, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred thirty-eight (638) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. 154(b) of four hundred seventy-eight (478) days.

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

Patentee acknowledges 468 days of A delay, 209 days of applicant delay, and 0 days of overlap. However, patentee's calculation of the number of days of B delay is incorrect.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period

begins on October 18, 2006, and ends on October 30, 2007, the day before the RCE was filed, and is 378 (not 379) days. See 35 U.S.C. 154(b)(1)(B)(i). Further, the Office notes that patentee failed to account for the filing of the notice of appeal on May 25, 2007. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii).

In this instance, the period consumed by appellate review is 159 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, May 25, 2007, and ending on the day before the filing of the RCE, October 30, 2007. Thus, B delay is 219 days (378 - 159).

Accordingly, the patent term adjustment is 478 days (468 days of A delay + 219 days of B delay - 209 days of applicant delay).

In view thereof, no change will be made in the revised determination of patent term adjustment at the time of the issuance of the patent.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

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